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06 UNITED STATES DISTRICT COURT
07 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

08 MICHAEL A. JACKSON,) CASE NO.: C08-1059-JLR-MAT
09)
Petitioner,)
10)
v.) ORDER DENYING PETITIONER'S
11) SECOND MOTION FOR
PAT GLEBE,) APPOINTMENT OF COUNSEL AND
12) STRIKING PETITIONER'S
Respondent.) PROPOSED COMPLAINT
13)

14 Petitioner is a state prisoner who has filed *pro se* an amended petition for habeas corpus
15 pursuant to 28 U.S.C. § 2254. (Dkt. No. 26). Respondent has been directed by the Court to file
16 an answer to the amended petition. (Dkt. No. 22). Petitioner recently filed a motion for
17 appointment of counsel and a proposed civil rights complaint. (Dkt. Nos. 29 & 30). The Court,
18 having considered petitioner's motion, proposed complaint, and the balance of the record, does
19 hereby find and ORDER:

20 (1) Petitioner previously filed a motion for appointment of counsel, which the Court
21 denied on January 13, 2009. (Dkt. No. 27). Petitioner raises no new grounds for appointment
22 of counsel in his second motion. Accordingly, for the reasons cited in the Court's previous Order,

ORDER DENYING PETITIONER'S SECOND
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petitioner's second motion for appointment of counsel (Dkt. No. 29) is DENIED.

(2) Petitioner has submitted a proposed civil rights complaint pursuant to 42 U.S.C. § 1983. (Dkt. No. 30). In the complaint, petitioner asserts that prison officials violated his constitutional rights by using excessive force against him. (Dkt. No. 30 at 3). For reasons that are unclear, petitioner asks in the complaint that it be “convert[ed] into habeas corpus petition.” (*Id.* at 4). Petitioner is advised that petitions for a writ of habeas corpus and civil rights complaints are two distinct types of actions. *See Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973) (civil rights complaints challenge the *conditions* of confinement while habeas petitions challenge the *validity* of confinement). If petitioner wishes to pursue his claim of excessive force, he must file a separate action under 42 U.S.C. § 1983. Accordingly, the Clerk shall STRIKE the proposed complaint (Dkt. No. 30) and shall return it to petitioner.

(3) The Clerk shall direct copies of this Order to petitioner, counsel for respondent, and to the Honorable James L. Robart.

DATED this 9th day of February, 2009.


Mary Alice Theiler
United States Magistrate Judge